SIKKIM

GOVERNMENT GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok, Saturday, 1st July, 2000 No. 226

GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No.14/LD/2000 Dated 30.6.2000

NOTIFICATION

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on 28th day of June, 2000 is hereby published for general information:-

THE SIKKIM PRIMARY EDUCATION ACT, 2000
(ACT NO. 14 OF 2000)
AN
ACT

to provide for free and compulsory primary education for children in the State of Sikkim.

Be it enacted by the Legislature of Sikkim in the Fifty - first Year of the Republic of India as follows:-

Short title, extent and commencement.

1. This Act may be called the Sikkim Primary Education Act, 2000.
(1) It extends to the whole of Sikkim.
(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,-
(a) 'academic year' means the year beginning on such date as the State Government may, by notification in the Official Gazette, specify in respect of any specified area or for approved schools generally or for any approved school or class of approved schools in particular;

(b) 'approved schools' means any school in any specified area imparting primary education which-

(i) is under the management of the State Government, or the local authority, or

(ii) being under any other management, is recognised by the local authority, or the State Government or an officer authorised by it in this behalf as an approved school for the purposes of this Act;

(c) 'area of compulsion' means any area in which primary education is declared to be compulsory under section 4 or 16;

(d) 'attendance authority' means any person appointed to be an attendance authority under section 7;

(e) 'to attend an approved school' means to be present for instruction at an approved school on such days in an academic year and at such time or times on each one of those days as may be fixed by the local authority concerned;

(f) 'child' means a boy or girl within such age-group not being less than six or more than fourteen years as may be specified in a declaration made under section 4 or 16;

(g) 'Director' means an officer appointed by the State Government as the Director of Education and includes any officer who may be authorised by the Sate Government to perform all or any of the functions of the Director under this Act;

(h) 'local authority' means a Municipal Corporation, an authorised Municipality or an authority constituted by or under any law for the time being in force, or any person or body of persons empowered by the State Government to control primary education in any area specified by the State Government;

(i) 'parent' in relation to any child includes a guardian and every person who has the actual custody of the child;

(j) 'prescribed' means prescribed by rules made under this Act;

(k) 'prescribed authority' means such authority as may be appointed by the Government;

(l) 'primary education' means education in such subjects and up to such standard not beyond the 8th standard as may, by general or special order, from time to time, be determinded by the State Government;

(m) 'special school' means any institution which imparts such primary education as in the opinion of the State Government or the local authority is suitable for children suffering from any physical or mental defect.

Scheme for primary education.

3. (1) It shall be the duty of every local authority to provide for compulsory primary education for children ordinarily residing within its jurisdiction, and for this purpose it shall, from time to time, submit to the State Government proposals in the form of a Scheme in respect of the whole or such part of the area within its jurisdiction and for children of such ages and up to such standard as the local authority deems fit.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, at any time, direct a local authority to submit to it within a specified time a Scheme for compulsory primary education in any area within the jurisdiction of the local authority for children of such ages and ordinarily resident therein, and up to such standard as the State Govenment may specify.

(3) Every Scheme shall be submitted in such form as the Director may specify and shall contain the following particulars, namely:-

(a) proposed area of compulsion;

(b) the census of children of the age to which the Scheme shall apply classified according to age and languages spoken by the children;

(c) a list of existing approved schools and the schools, if any, proposed to be opened or recognised for the purpose, classified by languages in which instruction is or is proposed to be imparted;

(d) a schedule of existing and proposed teaching and non-teaching staff including clerks and inferior servants;

(e) the recurring and non-recurring cost of the Scheme:

(f) a copy of the resolution of the local authority agreeing to bear its share of the additional recurring and non -recurring cost: and

(g) such other particulars, as may be prescribed.

(4) The State Government may after making such inquiry as it may consider necessary, sanction with or without modifications the Scheme submitted by the local authority under sub-section (2)

Primary education to be compulsory in areas covered by Schemes.

4. (1) On receipt of sanction under sub-section (4) of section 3, the local authority shall make a declaration in accordance with the sanctioned Scheme to the effect that on and from a date to be specified by the State Government, primary education shall be compulsory in the area specified in the declaration for children ordinarily resident in that area and within such age-group and up to such standard as may be specified in the declaration.

(2) Every declaration under sub-section (1) shall be published in the Official Gazette and in such other manner as the local authority may decide.

(3) Such date shall be specified by the State Government under sub-section (1) and shall be not earlier than sixty days after the date of publication of the declaration.

Grants-in-Aid.

5. The State Government shall in respect of every Scheme sanctioned under sub-section (4) of section 3 or prepared under sub-section (1) of section 16, bear such part of the recurring and non-recurring cost as it may from time to time determine.

Local Authority to prepare list of children.

6. It shall be the duty of the local authority to cause as early as possible after the publication of a declaration under section 4 to be prepared with a list of children in the area of compulsion in such manner as may be determined by the Director, and the local authority shall cause the list to be revised at such intervals as may be prescribed.

Attendance authorities.

7. (1) The local authority may appoint as many persons as it thinks fit to be attendance authorities for the purpose of this Act and may also appoint as many persons as it considers necessary to assist the attendance authorities in the discharge of their duties.

(2) Any person appointed under sub-section (1) may, in the exercise of any of the powers conferred by or under this Act, put such questions to any parent and require of him of such information about his child as he considers necessary; and every such parent shall be bound to answer such questions and furnish such information to the best of his knowledge or belief.

Attendance authority to notify parents.

8. It shall be the duty of the attendance authority to notify the parent of each child to whom the declaration under section 4 or 16 applies that he is under an obligation to ensure the attendance of such child at an approved school on and from the date specified in the notice.

Parent to cause child to attend school.

9. In every area of compulsion, save as provided in section 12, the parent of a child to whom a Scheme applies shall, if such parent and child ordinarily reside in such area, cause the child to attend an approved School unless there be a reasonable excuse for his non-attendance within the meaning of section 10.

Reasonable excuse for non-attendance.

10. For the purposes of this Act, the following circumstances shall be deemed to be a reasonable excuse for the non-attendance of a child at an approved school-

(a) that there is no approved School within the prescribed distance for his residence in which instruction is given in the language spoken by the child:

(b) that the child is receiving instruction in some other manner which is declared to be satisfactory by the State Government or by the local authority or has received a certificate from the attendance authority of having completed primary education up to the standard included in the Scheme applicable to him:

(c) that the child suffers from physical or mental sickness or defect which prevents him from attendance;

(d) that after due application, entrance to an approved School has been refused to the child and there is no other approved School to which he can be admitted within the prescribed distance, until such time as the parent is notified by the attendance authority that the child can be admitted;

(e) that there is no approved School in the locality to which the parent can send the child without exposing him to religious instruction to which the parent objects;

(f) that there is any other compelling circumstance which prevents the child from attending School, provided the same is certified as such by the attendance authority; and

(g) such other circumstances as may be prescribed.

Special schools for physically or mentally deficient children.

11. If there be a special School within the prescribed distance from the residence of a child suffering from a physical or mental defect, the attendance authority may, if it is satisfied that the child is not receiving any instruction in some other manner considered by it to be satisfactory, by order require the child to attend the special School; and it shall be the duty of the parent of such child to cause the child to attend the special School unless there be a reasonable excuse for the non-attendance of the child within the meaning of clause (f) of section 10.

Special provision for part-time education in certain cases.

12. Where the attendance authority is satisfied that a child, due to the economic or other circumstances of its facility, is unable to attend an approved school in the manner required by or under this Act, it may, by order, and subject to such conditions, if any, as it may impose, permit the child to attend any approved School established as a part-time institution or in which primary education is imparted on a part-time basis.

Attendance orders.

13. (1) Wherever the local authority has reason to believe that the parent of a child has failed to cause the child to attend School in accordance with the provisions of this Act and that there is no reasonable excuse for the non-attendance of the child within the meaning of section 10, it shall hold an inquiry in the prescribed manner.

(2) If as a result of the inquiry, the local authority is satisfied that the child is liable to attend School in accordance with the provisions of this Act and that there is no reasonable excuse for his non-attendance within the meaning of section 10, it shall pass an attendance order in the prescribed form directing the parent to cause the child to attend School accordingly with effect from the date specified in the order.

(3) An attendance order passed against a parent in respect of a child under sub-section (2) shall, subject to the provision of sub-section (6), remain in force so long as this Act continues to apply to the child.

(4) If any parent against whom an attendance order has been passed, in respect of his child under sub-section (2), transfers the custody of the child to any other person during the period in which the attendance order is in force, such parent shall be bound immediately to give intimation thereof in writing to the local authority.

5) An attendance order made under this section against a parent in respect of a child shall have effect in relation to every other person to whom the custody of the child may be transferred during the period in which the order is in force as if he were the parent, and the provisions of sub-section (4) shall apply accordingly to such person.

(6) A parent may at any time apply to the authority passing an attendance order for cancellation of the attendance order on the ground-

(a) that he is no longer the parent in respect of the child; or

(b) that circumstances have arisen which provide a reasonable excuse for non-

attendance of the child in accordance with the order and thereupon, the authority passing an attendance order may, after holding an enquiry in the prescribed manner, cancel or modify the attendance order.

(7) Any parent aggrieved by an order made under sub-section (2) or sub-section (6) may, within thirty days from the date of such order, appeal to the prescribed authority who may confirm, modify or rescind the order as it deems fit.

Penalty for employing child to whom Scheme applies.

14. Whoever knowingly takes into his employment, either on his own behalf or on behalf of any person, any child in respect of whom the provisions of section 9 apply, so as to interfere with the education or instruction of such child shalll, subject to the provisions of section 20 on conviction, be punished with a fine not exceeding twenty-five rupees and in the case of continuing contravention with an additional fine not exceeding rupee one for every day during which such contravention continues after conviction for the first of such contravention.

Primary education to be free.

15. (1) No fees shall be charged in respect of any child for attending in any school maintained by the Government.

(2) Where, in respect of any child an attendance order has been passed under section 13 and the only School which he can attend is an approved School under private management falling within sub-clause (ii) of clause (b) of section 2, the local authority shall take such steps as it may think fit for the purpose of ensuring that the primary education which the child is to receive, is free.

Failure of local authority to prepare or implement Scheme.

16. (1) If any local authority when called upon to submit a Scheme under sub-section (2) of section 3 fails to do so or after a Scheme has been sanctioned under sub-section (4) of section 3, fails to give effect to a Scheme so sanctioned, whether wholly or in part, the State Government may, after making such inquiry as it considers necessary and after giving an opportunity to the local authority to be held in the matter, appoint any person to prepare the Scheme or to give effect to it , as the case may be, and may direct that such part of the expenses as the State Government may determine, shall be defrayed out of the funds belonging to the local authority. The person so appointed shall perform all the functions of a local authority under this Act in respect of the Scheme.

(2) Where any such direction as is referred to in sub-section (1) is issued, any person who has for the time being in the custody of any moneys on behalf of the local authority either as a banker or in any other capacity, shall, notwithstanding anything contained in any law for the time being in force, is bound to comply with such direction. Every payment made pursuant to such direction shall be sufficient discharge to such person from all liability to the local authority in respect of any amount so paid by him out of the money of the local authority so held by him.

Penalty for the contravention of section 13.

17. (1) If any parent fails to comply with an attendance order made under section 13 unless such order is rescinded in an appeal made under sub-section (7) of that section, he shall, on conviction, be punished with a fine not exceeding two rupees; and in the case of a continuing contravention, with an additional fine not exceeding one rupee for every day during which such contravention continues after conviction for the first of such contravention:

Provided that the amount of fine payable by any one person in respect of any child in any one academic year shall not exceed fifty rupees.

(2) If any person fails to furnish any information as required by sub-section (4) of section 13, he shall, on conviction, be punished with fine which may extend to twentyfive rupees.

Power to withdraw, modify or suspend schemes of com-

18. A sanctioned Scheme may, with the sanction of the State Government, be withdrawn or from time to time, modified or temporarily suspended by a local authority or may, by an order published, with the reasons for making it, in the Official Gazette.

pulsion.

be modified, cancelled or temporarily suspended by the State Government.

Courts competent to try offences under sections 14 and 17.

19. (1) For the purpose of taking cognizance of an offence under section 14 or section 17, the Courts of Judicial Magistrate shall be competent to take cognizance of such offence within their respective Districts.

(2) A Court of a Judicial Magistrate taking cognizance of any offence under sub-section (1) shall try the case summarily in the manner provided in section 263 of the Code of Criminal Procedure, 1973. *(2 of 1974)*

Cognizance of offences.

20. No Court shall take cognizance of an offence under this Act except on a complaint presented in person or sent by registered post by the attendance authority or any other person authorised in this behalf by the local authority by general or special order. Before making any complaint under section 14 of this Act against any person, the attendance authority or the person authorised by the local authority to make a complaint shall, unless such person has been previously convicted under that section, cause a warning to be given to such person.

Certain persons to be public servants.

21. Every person appointed under sub-section (1) of section 7 and every person authorised under section 20 to make complaints shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code, 1860. *(45 of 1860)*

Protection of action taken in good faith.

22. No suit, prosecution or other legal proceedings shall lie against the State Government or any authority or person in respect of anything which is in good faith done or intended to be done under this Act.

Delegation of Powers.

23. (1) The State Government may, by notification in the Official Gazette and subject to such conditions, if any, as may be specified in the notification, authorise any officer or authority subordinate to it to exercise all or any of the powers conferred on the State Government by or under this Act.

(2) A local authority may, by general or special order, authorise any of its members or any officer or authority subordinate to it to exercise all or any of the powers conferred on the local authority by or under this Act.

Constitutional powers and procedure of Primary Schools Panchayat.

24. (1) The State Government may, by notification the Official Gazette, constitute a Primary Schools Panchayat for the trial of offences punishable under this Act.

(2) The Primary Schools Panchayat constituted under sub-section (1) shall consist of three members appointed by the State Government, one of whom shall be the Chairman. The qualifications of the members shall be such as may be prescribed. The members so appointed shall hold office during the pleasure of the State Government.

(3) Two members shall form a quorum for the disposal of the business of the Primary Schools Panchayat.

(4) Any vacancy of a member of the Primary Schools Panchayat shall be filled as early as practicable:

Provided that, during any such vacancy the remaining members may act as if no vacancy had occurred.

(5) Every local authority shall, with the approval of the State Government, maintain an adequate staff for enabling a Primary Schools Panchayat to discharge its functions under this Act.

Certificate of Head Master to be conclusive

25. Where the parent of a child has failed to comply with an order made under sub-section (2) or as the case may be, such order as modified under sub-section (6) of section 13, unless such order has been rescinded by a competent authority under sub-section (7) of that section, the Headmaster of such School shall issue a certificate to

evidence of parents' failure to comply with section 17.

the effect that such parent has failed to cause the child to attend school in compliance with such direction and such certificate shall, until the contrary is proved, be presumed to be conclusive evidence of such failure in a prosecution against the parent under section 17.

Saving of pending proceedings.

26. Every prosecution under section 14 or 17 pending before any Court in any area on the date on which a Primary School is constituted for such area under section 24 and all proceedings arising from or to any such prosecution shall be tried, heard and determined by such Court or any other Court having jurisdiction to try, hear and determine the same, as if no such Primary School Panchayat had been constituted for such area.

Power to make rules.

27. (1) The State Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may be made to provide for all matters expressly required or allowed by this Act to be prescribed by rules.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the House, while it is in Session, for a total period of thirty days which may be comprised in one Session or in two or more successive Sessions, and if, before the expiry of the Session immediately following the Session or successive Sessions aforesaid, the House agree in making any modification in the rule or the House agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal and Savings.

28. (1) Every Scheme of compulsion sanctioned under any of the provisions so repealed and in force immediately before the commencement of this Act shall be deemed to be a Scheme sanctioned under this Act and shall be executed in accordance with the provisions of this Act.

(2) Any right, privilege, obligation or liability acquired, accrued or incurred under any such Scheme or under any other provisions so repealed shall continue as if acquired accrued or incurred under this Act and it may be enforced in accordance with the provisions of this Act.

(3) Any proposal, appointment, notification, order, rule, notice, report or delegation made or issued under any of the provisions so repealed shall, in so far as it is not inconsistent with the provisions of this Act, continue to be lawful until it is altered or superseded by a proposal, appointment, notification, order, rule, notice, report or delegation made or issued under this Act.

By Order of the Governor.

T.D. Rinzing,
Secretary to the Govt. of Sikkim,
Law Department.
(F.No.16(82)LD/2000).